VICTOR HEGSTED

IBLA 82-854 Decided July 23, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 33224 through I MC 33228.

Affirmed.

1. Administrative Procedure: Burden of Proof--Evidence: Burden of Proof--Evidence: Presumptions--Evidence: Sufficiency--Mining Claims: Abandonment

   There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed, with adequate postage affixed, deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states it did not receive the instrument, the burden is on the one asserting that it was delivered to show that it was, in fact, timely received by BLM.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

   Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence ofperformance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to

> comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

APPEARANCES: Victor Hegsted, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Victor Hegsted appeals the April 20, 1982, decision of the Idaho State Office, Bureau of Land Management (BLM), which declared the unpatented Maritan #1 and #2, Ceaser, Hill, and Gulch lode mining claims, I MC 33224 through I MC 33228, abandoned and void because no proof of labor was filed with BLM during 1980 as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

The claims were located between 1902 and 1919. Copies of the location notices and evidence of assessment work were filed with BLM on October 18, 1979. The 1981 proof of labor was filed December 22, 1981. The file does not reflect that any proof of labor was submitted to BLM in 1980.

Appellant states he has recorded a proof of labor every year in Lemhi County, Idaho, and that the claims have been worked since 1906. He argues that the new recordation requirements of FLPMA impose a hardship on the claimant, and he questions the integrity of the BLM records relating to mining claims. He concedes the Postal Service is undependable but asserts he did mail the 1980 proof of labor timely to BLM. He suggests the voiding of his claims is arbitrary because the claims are in a scenic wilderness type area. He complains that he was not given information within a reasonable time so he could cure the deficiency.

[1] Various presumptions come into play when an appellant alleges transmittal of an instrument, but BLM has no record of its receipt. On one hand, there is a presumption of regularity which supports the official acts of public officers in the proper discharge of their duties. See, e.g., Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); Bernard S. Storper, 60 IBLA 67 (1981); Phillips Petroleum Co., 38 IBLA 344 (1978). On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed, deposited in an appropriate receptacle, is duly delivered. See, e.g., Donald E. Jordan, 35 IBLA 290 (1978). When these two presumptions have come into conflict, the Board has generally accorded greater weight to the former. See David F. Owen, 31 IBLA 24 (1977). We believe that public policy considerations dictate that greater weight be given to the presumption of regularity over that accorded the presumption that mail, duly addressed, stamped, and deposited, is delivered.

Thus, where after diligent and thorough search BLM states it did not receive the instrument, the burden is on the appellant to show that the instrument was, in fact, timely received by BLM. See H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981).

Appellant's unsupported statement that he transmitted the 1980 proof of labor to BLM does not overcome the presumption of regularity by BLM employees. It is the receipt of the instrument which is critical.

The regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if loss of the envelope, containing the evidence of assessment work and addressed to BLM, was caused by the Postal Service, that fact would not excuse appellant's failure to comply with the cited regulations. Cf. Regina McMahon, 56 IBLA 372 (1981); Everett Yount, 46 IBLA 74 (1980). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequence of loss or untimely delivery of his filings. Regina McMahon, supra; Don Chris A. Coyne, 52 IBLA 1 (1981). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

[2] Section 314 of FLPMA requires the owner of unpatented mining claims located prior to October 21, 1976, in addition to filing with BLM a copy of the official record of the notice of location, to file with BLM evidence of assessment work performed on the claim, or a notice of intention to hold the claim within 3 years after the date of the Act, i.e., on or before October 22, 1979, and prior to December 31 of each calendar year thereafter. The statute also provides that failure to file such instruments within the time periods prescribed shall be deemed conclusively to constitute an abandonment of the mining claims by the owner. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). As the requirement to file is mandatory, not discretionary, failure to comply must be conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980).

BLM was under no obligation to notify appellant of the need for a 1980 filing. The fact that it may have done so in 1981 was merely a courtesy which appellant had no right to expect. Those who deal with the Government are presumed to have knowledge of the law and the regulations duly promulgated pursuant thereto. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978). The responsibility for complying with the recordation requirements rested with appellant.

Appellant states that he has recorded his proof of labor in Lemhi County, Idaho, every year. It is well established that failure of the owner of an unpatented mining claim to submit evidence of assessment work or a notice of intention to hold the claim, both to the county where the location notice of the claim is recorded and to the proper office of BLM, prior to December 31 of each calendar year, shall be deemed conclusively to constitute an abandonment of the claim. Recordation only in the county does not satisfy the FLPMA requirements. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge